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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicant/Appellant : Nancy A. Abbe

Application No. : 09/844,627 Confirmation No. : 2399

Filed : April 27, 2001

For : METHODS AND APPARATUS FOR STORING FOOD

Group Art Unit : 3727

Examiner : Stephen Castellano

New York, New York 10020  
February 18, 2004

Mail Stop AF  
Hon. Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

REPLY TO NOTIFICATION OF NON-COMPLIANCE  
WITH 37 C.F.R. § 1.192(C)

Sir:

This is in response to the Examiner's January 30, 2004 Notice of Non-Compliance ("Notice"), a copy of which is enclosed herewith. Applicant/appellant is filing this Reply within the one-month period set forth in the Notice, therefore, no fee is required.

Express Mail Label  
No. EV132185480US

The Notice indicates that the Appeal Brief filed on November 13, 2003 ("Brief") is considered defective for failure to comply with one or more provisions of 37 C.F.R. § 1.192(c). Applicant/appellant respectfully submits that, for at least the reasons set forth below, the Examiner's Notice is in error.

First, applicant/appellant disagrees with the Examiner's contention that the Brief does not contain the items required under 37 C.F.R. § 1.192(c), or that the items in the Brief are not under the proper heading or in the proper order.

As set forth by the MPEP, "[a] brief is in compliance [if] it includes items (1) to (9) in the order set forth (with the appendix, item (9), at the end)" (MPEP § 1206, emphasis added). Applicant/appellant respectfully submits that this requirement is met, given that the Brief contains each of the nine items listed under 37 C.F.R. § 1.192(c) in the proper order\* (e.g., the Status of Claims is located prior to the Grouping of Claims, which is located prior to the Appendix of claims involved in the appeal, etc.).

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\* Applicant/appellant respectfully points out that the Examiner has not suggested that the Brief is lacking one of the nine required items, nor that any of these items are out of order.

Moreover, applicant/appellant disagrees with the Examiner's statement that the Brief is defective because "[t]he conclusion of appellant's remarks is listed as item 9 (IX) rather than the claims appendix being labeled as item 9." Applicant/appellant submits that there is no requirement, nor has the Examiner provided any evidence that there is, for the headings (and their respective reference numerals) of the nine required items in the Brief to exactly match those listed in 37 C.F.R. § 1.192(c).\* On the contrary, 37 C.F.R. § 1.192(c) merely requires that each of the nine items be found "under appropriate headings," as opposed to requiring the exact headings listed therein. Moreover, the Examiner has implicitly acknowledged this distinction by failing to object to several of the other headings found in the Brief. For example, the first item in the Brief includes a heading of "IDENTIFICATION OF REAL PARTY-IN-INTEREST," rather than "Real party in interest" as listed in 37 C.F.R. § 1.192(c). The Brief, for

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\* The Examiner's contention that the reference numerals must match is tenuous, considering the fact that additional sections (e.g., a "Conclusion" section) may be included in the Brief. MPEP § 1206 ("37 C.F.R. § 1.192(c) merely specifies the minimum requirements for a brief, and does not prohibit the inclusion of any other material ... for example, a list of references, table of contents, table of cases, etc.,," emphasis added).

example, also includes a heading of "ISSUES ON APPEAL," rather than simply "Issues" as listed in 37 C.F.R. § 1.192(c). Regardless of the Examiner's inconsistency, the items (and respective headings) found in the Brief fully comply with the MPEP and 37 C.F.R. § 1.192(c).

Second, applicant/appellant also respectfully disagrees with the Examiner's contention that it is improper for the Examiner's seven pending rejections under 35 U.S.C. § 103(a) to be listed together as issue "E" under the Brief's "ISSUES ON APPEAL" section. Applicant/appellant's Brief includes a "concise statement" of the issues presented for review as required by the MPEP § 1206, in which applicant/appellant attempted to simplify the issues for the Board. Meanwhile, applicant/appellant's statement is "not so concise as to omit the basis" of the issue presented under section "E" (i.e., the basis of the issue is clearly stated to be whether or not any combination of the references cited by the Examiner render any of claims 1-9, 13-17, 19-20, 24 and 26 unpatentable under 35 U.S.C. § 103(a)). Therefore, applicant/appellant's "ISSUES ON APPEAL" satisfies the requirement of a concise statement of the issues presented for review as set forth by 37 C.F.R. § 1.192(c)(6).

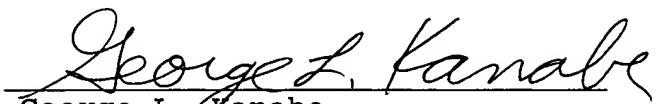
Nonetheless, applicants submit herewith a new Appeal Brief ("New Brief"), in triplicate, in response to the requirements set forth by the Examiner in the Notice. In particular, the New Brief includes a "Conclusion" section without a reference numeral such that the first Appendix can be labeled as suggested by the Examiner. Additionally, in order to avoid further delay in the prosecution of this application, the headings for some of the nine items required under 37 C.F.R. § 1.192(c) have been changed to exactly match those listed in the MPEP (i.e., to include the same words and capitalization, and to be in italics rather than underlined), and each of the headings in the New Brief are now preceded by respective Arabic, not Roman, numerals. Finally, each of the seven pending rejections under 35 U.S.C. § 103(a) have been listed as separate issues on appeal (i.e., issues E-K).

Applicant/appellant respectfully submits that the New Brief filed herewith in triplicate is in full compliance with 37 C.F.R. § 1.192(c).

The Director is hereby authorized to charge any additional fees that may be due, or credit any overpayment of

same, to Deposit Account No. 06-1075. A duplicate copy of this response is enclosed.

Respectfully submitted,

  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,627	04/27/2001	Nancy A. Abbe	ABBE/001	2399

1473 7590 01/30/2004  
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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 01/30/2004



Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliance  
With 37 CFR 1.192(c)

Application No.

09/844,627

Applicant(s)

ABBE, NANCY A.

Examiner

Stephen J. Castellano

Art Unit

3727

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 13 November 2003 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing date of this Notification, whichever is longer; (2) TWO MONTHS from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.

1.  The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2.  The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3.  At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4.  The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5.  The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6.  A single ground of rejection has been applied to two or more claims in this application, and
  - (a)  the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b)  the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7.  The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8.  The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9.  Other (including any explanation in support of the above items):

Item 1: The conclusion of appellant's remarks is listed as item 9 (IX) rather than the claims appendix being labeled as item 9.

Item 5: The issues are incomplete. The final rejection includes 11 separate grounds of rejection. Appellant establishes only five issues (A-E). Issues A-D correspond to the 112 rejection and the three 102 rejections, while issue E corresponds to all seven of the 103 rejections, this is improper. Appellant may concede any of the grounds of rejection by removing all arguments pertaining to that ground and eliminating that issue. Appellant has presented arguments for each ground of rejection and is required to submit an issue to each corresponding ground of rejection.

Item 6: Appellant states that the claims subject to each rejection stand or fall with that rejection and the arguments are consistent with this since appellant has not separately argued the claims within the grounds of rejection.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit: 3727